

§ 9901.513

status may appeal to the MSPB under 5 CFR 315.908(b).

(v) *Relationship to other actions.* (A) If an employee is required to concurrently serve both a supervisory and an initial probationary period, the latter takes precedence.

(B) An action that demotes an employee to a pay band lower than the one the employee left to accept the supervisory position, for reasons other than supervisory performance, is governed by part 752 of this title.

§ 9901.513 [Reserved]

§ 9901.514 Non-citizen hiring.

The Secretary may establish procedures for appointing non-citizens to permanent, temporary, or time-limited positions in the excepted service, provided there is a demonstrated absence of qualified U.S. citizens and applicable immigration and security requirements are met. Non-citizens may not be promoted, reassigned, or reduced in band, except in situations where a qualified U.S. citizen is once again unavailable.

§ 9901.515 Competitive examining procedures.

(a)(1) Under NSPS, applicants are appointed to career, career conditional, term, and temporary appointments in the competitive service using competitive examining procedures consistent with part 300, subpart A of this title. In recruiting applicants from outside the civil service for competitive appointments to competitive service positions in NSPS, Components with examining authority may use either numerical rating and ranking or alternative ranking and selection procedures (*i.e.*, category rating). Components must decide which procedures to use prior to issuing a vacancy announcement and include this information in the vacancy announcement.

(2) The Secretary will issue uniform policies, procedures, and guidance concerning competitive examining for NSPS within the Department and may delegate in writing authority for competitive examining for NSPS positions. All actions taken under competitive examining procedures will be made without regard to race, color, religion,

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age, gender, national origin, political affiliation, disability, sexual orientation, marital or family status, or other prohibited criteria, and will be based solely on job-related factors. These policies, procedures, and guidance will be consistent with the “Uniform Guidelines on Employee Selection Procedures” (1978) 43 FR 38290 (August 25, 1978) and part 332, subparts A and C of this title.

(b) *Public notice.* (1) Components will accept applications from all U.S. citizens, to include current Federal employees, and at a minimum, will consider applicants from the local commuting area. Components may concurrently consider applicants from other targeted recruitment sources, as specified in the vacancy announcement. A targeted recruitment source is a category or grouping of potentially qualified individuals, such as all students at a particular university in a particular field of study. Targeted recruitment sources will be selected with equal protection considerations in mind, such as whether the sources will reach a diverse applicant pool. If there are insufficient qualified candidates in both the local commuting area and targeted recruitment sources, Components may consider applicants from outside that area.

(2) When limiting consideration, the vacancy announcement will clearly state that consideration will be limited if sufficient qualified candidates are received from the local commuting area and other targeted recruitment sources. If sufficient candidates are not received from the local commuting area and other targeted recruitment sources, consideration will be expanded to all applicants; *i.e.*, the area of consideration will not be expanded incrementally.

(3) No minimum announcement opening period is required. The open period will be based on the type of position being filled and the availability of qualified candidates in the labor market.

(c) *Numerical rating and ranking procedures.* When filling positions using numerical rating and ranking, the procedures issued by the Secretary will be followed. All qualified applicants may be referred and selection may be made

from among any referred applicant except that a preference eligible will not be passed over to select a non-preference eligible, unless procedures under 5 U.S.C. 3318 for passing over a preference eligible are followed.

(d) *Alternative ranking and selection procedures (category rating).* When filling positions using category rating, procedures issued by the Secretary will be followed in lieu of the procedures in part 337, subpart C, except for §337.304, of this title.

(e) *Passing over preference eligibles.* OPM retains the authority to grant or deny a pass over request of a preference eligible with a compensable service-connected disability of 30 percent or more and to make medical qualifications determinations pertaining to preference eligibles. The Secretary has the authority to grant or deny a pass over request of a preference eligible with a compensable service-connected disability of less than 30 percent.

§9901.516 Internal placement.

(a) *Determining levels of work and movement within and across career groups.* The determination of when an action is a promotion, reassignment, or reduction in band for competitive or noncompetitive movement and related pay administration purposes, either between NSPS positions or to an NSPS position from a non NSPS position, must be made by applying the definitions of those terms at §9901.103.

(b) *Eligibility for promotion to full performance band.* An employee with a rating of record of Level 1 or Level 2 is not eligible for promotion to the full performance band of the position until such time as the employee attains a rating of record of Level 3 or above. An employee who does not have an NSPS rating of record may be promoted to the full performance band of the position if an authorized management official conducts a performance assessment and determines that the employee is performing at the equivalent of Level 3 or above.

(c) *Time after competitive appointment restriction.* Restrictions on the movement of an employee immediately after the employee's initial appointment to Federal service as described in 5 CFR

part 330, subpart E, are not applicable to NSPS positions.

(d) *Details.* There is no time limit on details or any requirement to extend them incrementally. An official personnel action is not required to document a detail unless the detail exceeds one year, crosses Component and/or Agency lines or assigns an employee from NSPS to another pay system within the Component (e.g., NSPS to General Schedule), or documents developmental rotational assignments or deployment.

(e) *NSPS Merit Promotion Program.* In accordance with the Secretary's authority to prescribe regulations for the assignment, reassignment, reinstatement, detail, transfer, and promotion of individuals or employees into or within NSPS, the procedures below, in conjunction with the merit promotion requirements in 5 CFR 335.103(b) constitute the NSPS Merit Promotion Program. Internal placement actions may be made on a permanent or temporary basis using competitive and noncompetitive procedures.

(1) All actions taken under the NSPS Merit Promotion Program, whether involving the identification, qualification, evaluation, or selection of candidates, will be made without regard to race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital or family status or other prohibited criteria and will be based solely on job-related factors.

(2) Vacancy announcements will identify areas of consideration that are sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Employees within the area of consideration who are absent for legitimate reason (e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments) must receive appropriate consideration, if they apply for a vacant position; *i.e.*, they cannot be excluded from consideration because they are absent. Employees who are unable to apply for vacant positions while